

7.5 Governing Law

This Agreement shall be construed in accordance with and governed by the internal laws of the State of Michigan.

7.6 Entire Agreement

This is the entire and exclusive agreement between the Parties with respect to the Service provided hereunder and supersedes all prior agreements, proposal or understandings, whether written or oral, except to the extent the same may be specifically incorporated herein by reference.

7.7 Section Headings

All section headings contained herein are for convenience only and are not intended to define, limit or expand the scope of any provisions of this Agreement.

7.8 Disclosure

Neither party shall share or market any information relating to the Trial or any Service provided to Trial Customer under this Agreement, including mentioning or implying the name of Trial Customer or Ameritech, or its affiliates, without the prior written approval of the other party.

7.9 Duplicate Original

Duplicate originals of this Agreement shall be executed simultaneously with the execution of this Agreement, each of which shall be deemed an original, but which together shall constitute one and the same instrument, without necessity for the production of the other.

7.10 Notices

All communications required or permitted under this Agreement shall be addressed as follows:

If intended for Trial Customer:

Brooks Fiber Properties, Inc.
2855 Oak Industrial Drive
Grand Rapids, Michigan 49506
Attn: Martin W. Clift

If intended for Ameritech:

Ameritech Information Industry Services
350 North Orleans, Floor 3
Chicago, Illinois 60654
Attn: Vice President & General Counsel

Executed this 12 day of June, 1996.

Brooks Fiber Properties,
Inc.

By: Martin W. Clift, Jr.

Name: Martin W. Clift, Jr.

Title: Director Regulatory Affairs

Date: June 12, 1996

Ameritech Information Industry
Services, a division of
Ameritech Services, Inc.

By: Gregory H. Dunne

Name: Gregory H. Dunne

Title: VP-Reg. Sec. & Bus. Dev. - Ameritech

Date: June 18, 1996

Attachment 1

Test Script/Record

- Basic Caller ID
- Ported # to Ported #
- Automatic Recall
- Ported # to Port # (AR)
- Simultaneous Calls
- Test for Possible Looping LD Test Calls (Chk CLID)
- LD Call to Ported # (ATT)
- LD Call to Ported # (MCI)
- LD Call to Ported # (Sprint)
- LD Call to Ported # (Teledial)
- LD Call to Ported # (Other)
- Anonymous Call Rejection
- Automatic Callback
- Automatic Recall
- Bulk Calling Line Identification
- Call Waiting Deluxe
- Calling Identity Delivery Blocking
- Calling Identity Delivery on Call Waiting
- Calling Name Delivery
- Calling Number Delivery
- Customer Originated Trace
- Distinctive Ringing
- Numbering Plan Area Split
- Screening List Editing
- Selective Call Acceptance
- Selective Call Forwarding
- Selective Call Rejection
- Visual Message Waiting Indicator
- Visual Screening List

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the application for approval of an)
interconnection agreement between **BROOKS FIBER**)
COMMUNICATIONS OF MICHIGAN, INC., and)
Ameritech Information Industry Services on behalf)
of **AMERITECH MICHIGAN**.)
_____)

Case No. U-11178

At the November 26, 1996 meeting of the Michigan Public Service Commission in Lansing,
Michigan.

PRESENT: Hon. John G. Strand, Chairman
Hon. John C. Shea, Commissioner
Hon. David A. Svanda, Commissioner

OPINION AND ORDER

On September 6, 1996, Ameritech Michigan filed an application for approval of an interconnection agreement entered into by Brooks Fiber Communications of Michigan, Inc., (Brooks Fiber) and Ameritech Information Industry Services on behalf of Ameritech Michigan. Both Ameritech Michigan and Brooks Fiber have been licensed by the Commission to provide basic local exchange service in certain exchanges in the Grand Rapids, Lansing, and Detroit LATAs. The interconnection arrangements between Ameritech Michigan and Brooks Fiber establish the rates, terms, and conditions that will govern the exchange of traffic between the two providers and the interconnection of their networks.

Pursuant to a notice of opportunity to comment, the Michigan Public Service Commission Staff (Staff) and AT&T Communications of Michigan, Inc., (AT&T) filed comments on November 5, 1996.

Standard for Review

The application was filed pursuant to Section 203(1) of the Michigan Telecommunications Act (MTA), 1991 PA 179, as amended by 1995 PA 216, MCL 484.2101 et seq.; MSA 22.1469(101) et seq., and Section 252(e)(1) of the federal Communications Act of 1934, as amended by the Telecommunications Act of 1996, 47 USC 151 et seq. As a negotiated agreement, the following standard applies, pursuant to Sections 252(e)(2) of the federal act:

- (2) GROUNDS FOR REJECTION. - The State commission may only reject--
 - (A) an agreement (or any portion thereof) adopted by negotiation under subsection (a) if it finds that--
 - (i) the agreement (or portion thereof) discriminates against a telecommunications carrier not a party to the agreement; or
 - (ii) the implementation of such agreement or portion is not consistent with the public interest, convenience, and necessity;
- (3) PRESERVATION OF AUTHORITY. - Notwithstanding paragraph (2), but subject to section 253, nothing in this section shall prohibit a State commission from establishing or enforcing other requirements of State law in its review of an agreement, including requiring compliance with intrastate telecommunications service quality standards or requirements.

47 USC 252(e)(2) and (3).

Also relevant are provisions of the MTA, primarily Article 3A, Interconnection of Telecommunication Providers with the Basic Local Exchange Service, and the Commission's orders in Cases Nos. U-10647 and U-10860 as they relate to the rates, terms, and conditions of interconnection

The Interconnection Agreement.

The agreement between Ameritech Michigan and Brooks Fiber provides, among other things, for the interconnection of their networks, unbundled access to network elements, and physical

collocation. It includes prices for reciprocal compensation, busy line verification, transiting, unbundled loops, nonrecurring charges, loop conditioning, and interim number portability. The interconnection agreement includes two pricing schedules: one applicable to interconnection services prior to January 1, 1997; the other applicable on and after January 1, 1997. "The two separate schedules were negotiated in order to avoid any potential conflict with the requirements of the MTA." Application, p. 4. The agreement adopts tariffed rates for certain services such as unbundled ports. It also indicates that some other rates, such as for resale service, will be negotiated at a later date. The following additional agreements are referenced in the interconnection agreement:

1. Agreement for switched access meet point billing.
2. Telecommunications services trial agreement.
3. Agreement for enhanced 9-1-1 service.
4. White pages listing and directory services agreement for Grand Rapids.
5. White pages listing and directory services agreement for Holland/Zeeland.
6. Operator toll and assist services agreement.
7. Calling name delivery service agreement.

The first two agreements were not submitted with the application.

Staff Comments

The Staff concludes, with minor exceptions, that the proposed agreement complies with the public interest, is nondiscriminatory, and satisfies regulatory requirements in the federal act and the MTA. The Staff proposes that the Commission approve the agreement if certain sections of the agreement are understood as it proposes and if the agreement is modified within 10 days of the issuance of this order. The Staff also notes that Section 252(h) of the federal act requires that the Commission make available copies of the agreement for public inspection within 10 days of its approval of the agreement.

The Staff proposes that the June 12, 1996 telecommunications services trial agreement be filed as part of the publicly available contract. It says that, according to the interconnection agreement, the trial agreement specifies the manner in which Ameritech Michigan will provide direct inward dial trunks to Brooks Fiber for purposes of interim number portability. Agreement, Section 13.3. Because this service is a component of local interconnection, the Staff asserts that the terms of the trial agreement must be incorporated in the publicly available contract. The Staff does not propose that the agreement for switched access meet point billing, referenced in Sections 1.4, 1.43, and 6.3 of the agreement, be similarly submitted, however. The Staff notes that, according to the description in the interconnection agreement, the meet point agreement applies only to switched access interconnections rather than to local service interconnections, and thus Section 252 of the federal act does not require that it be submitted.

The Staff also notes that, according to the Section 15.0 of the agreement, access to poles, ducts, conduits, and rights-of-way will be offered pursuant to Section 224 of the federal act, but under that section, states may exercise preemptive authority. Because Michigan has exercised that authority for a number of years, and because that authority has not been affected by the MTA, the Staff says that access to poles, ducts, conduits, and rights-of-way should be in compliance with Section 361 of the MTA. The Staff proposes that this reference be incorporated in Section 15.0 of the agreement.

The Staff also offers the following clarifications with regard to the agreement.

First, Ameritech Michigan proposes to offer unbundled ports pursuant to applicable state tariffs. Agreement, Section 9.2. The Staff notes that there is presently no state tariff for unbundled ports, although a proposal by Ameritech Michigan is presently under review in Advice No. 2438(B) submitted on September 27, 1996. In addition, the Staff notes that the definition of port contained

in Section 1.50 is not in conformity with the definition in Advice No. 2438(B), the MTA, or the Federal Communications Commission's (FCC) interconnection rules adopted on August 8, 1996 in CC Docket 96-98. Therefore, the Staff asserts that if Brooks Fiber later decides to purchase unbundled ports, the definition in the interconnection agreement may have to be amended.

Second, the Staff emphasizes that if prices for items not included in the interconnection agreement are later finalized, (e.g., additional unbundled network elements, database access), amendments to the agreement must be filed with the Commission.

Third, the Staff notes that the pre-1997 pricing schedule includes rates for both two- and four-wire loops. The Staff says that the Commission established rates for only residential and business loops in its orders in Case No. U-10647, without distinction between two- or four-wire loops, and that those rates remain in effect at the present time, pursuant to MCL 484.2352(2); MSA 22.1469(352)(2). The Staff notes that the Commission addressed this issue when it referenced a footnote to the pre-1997 pricing schedule in the Ameritech Michigan/MFS Intelenet Michigan, Inc., (MFS) interconnection agreement that was at issue in the August 22, 1996 order in Case No. U-11098. The Commission stated:

The Commission finds that the footnote recognizes that the rates, terms, and conditions established in Case No. U-10647, as modified or reaffirmed in Case No. U-10860, or as otherwise determined by the Commission are controlling.

August 22, 1996 order, p. 16. The same footnote is contained in the pre-1997 pricing schedule in the Brooks Fiber interconnection agreement.

Fourth, again in reference to the proposed pricing schedules, the Staff notes that although a price for interim number portability is included in the pre-1997 pricing schedule, reference is also made to Section 13.6 of the agreement. That section requires recovery of relevant costs to comply "with the methodology (including recordkeeping) established by the FCC or the Commission with

respect to such Party's recovery in a competitively neutral manner of its costs to provide Interim Number Portability." Agreement, Section 13.6. Again, the Staff recommends that the footnote reference be controlling.

Fifth, the Staff notes Ameritech Michigan's position that certain matters in the white pages listing and directory services agreements are not within the Commission's jurisdiction, although Ameritech Michigan does not identify the portions that it believes are beyond the Commission's jurisdiction. The Staff asserts that all of the issues addressed by those exhibits appear to require Commission approval. However, because the entire listing and directory services agreements have been included with the application, the Staff recommends that the Commission approve the entire agreements, including the unspecified sections that Ameritech Michigan believes are beyond the Commission's jurisdiction.

Finally, the Staff notes that Section 28.15 of the agreement relates to the effect of other interconnection agreements or tariffs that are offered to other carriers. The Staff believes that the provision does not comply with Section 252(i) of the federal act, which requires that any interconnection, service, or network element provided to another carrier under an agreement approved under that section be made available to any requesting telecommunication carrier under the same terms and conditions. The Staff notes that the issue was discussed in the August 22, 1996 Commission order on the MFS interconnection agreement: "Anyone aggrieved by Ameritech Michigan's unwillingness to grant the terms and conditions they desire may use the processes provided by law to resolve disputes." August 22, 1996 order, Case No. U-11098, p. 14.

Therefore, the Staff recommends that the Commission approve the agreement subject to (1) inclusion of the telecommunications services trial agreement as an attachment to the interconnection agreement, (2) inclusion of the jurisdictional reference to Section 361 of the MTA with

regard to rights-of-way, (3) the Commission's acceptance of the Staff's interpretation of the six contract provisions discussed above, and (4) the filing of the final agreement within 10 days of the issuance of the order approving it.

AT&T Comments

AT&T says that it does not object to approval of the agreement and will not present any arguments on whether the agreement complies with the law or is in the public interest. It only requests that the Commission confirm the conclusion reached in the August 22, 1996 order in Case No. U-11098 that approval of an interconnection agreement has no precedential effect. It also requests that the Commission confirm that approval does not relieve Ameritech Michigan of its obligations under the federal act and the MTA to provide service and service elements to other carriers in a nondiscriminatory manner.

Discussion

After reviewing the agreement and the comments, the Commission concludes that it should approve the interconnection agreement, with the attached exhibits, subject to satisfactory resolution of the issues raised by the comments of the Staff and AT&T. On that basis, the agreement is consistent with federal and state law and is in the public interest.

The Commission FINDS that:

a. Jurisdiction is pursuant to 1991 PA 179, as amended by 1995 PA 216, MCL 484.2101 et seq.; MSA 22.1469(101) et seq.; Communications Act of 1934, 47 USC 151 et seq.; 1969 PA 306, as amended, MCL 24.201 et seq.; MSA 3.560(101) et seq.; and the Commission's Rules of Practice and Procedure, 1992 AACS, R 460.17101 et seq.

b. The interconnection agreement, with its exhibits, should be approved, subject to satisfactory resolution of the issues raised by the comments of the Staff and AT&T.

THEREFORE, IT IS ORDERED that:

A. The telecommunications services trial agreement is made an exhibit to the interconnection agreement.

B. Section 15.0 of the agreement shall refer to Section 361 of the Michigan Telecommunications Act, MCL 484.2361; MSA 22.1469(361), as well as Section 224 of the federal act, as governing with regard to access to poles, ducts, conduits, and rights-of-way.

C. The Commission Staff's clarifications and interpretations of the six contract provisions discussed above are adopted.

D. Approval of the agreement does not serve as precedent for Ameritech Michigan's obligations and does not alter its duty to comply with relevant federal and state law and past and future Commission orders.

E. Ameritech Michigan and Brooks Fiber Communications of Michigan, Inc., shall file the final agreement, with the six relevant exhibits, within 10 days of the issuance of this order.

The Commission reserves jurisdiction and may issue further orders as necessary.

Any party desiring to appeal this order must do so in the appropriate court within 30 days after issuance and notice of this order, pursuant to MCL 462.26; MSA 22.45.

MICHIGAN PUBLIC SERVICE COMMISSION

/s/ John G. Strand
Chairman

(S E A L)

I dissent, as discussed in my separate opinion

/s/ John C. Shea
Commissioner

/s/ David A. Svanda
Commissioner

By its action of November 26, 1996.

/s/ Dorothy Wideman
Its Executive Secretary

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

* * * * *

In the matter of the application for approval of an)	
interconnection agreement between BROOKS FIBER)	
COMMUNICATIONS OF MICHIGAN, INC. , and)	Case No. U-11178
Ameritech Information Industry Services on behalf)	
of AMERITECH MICHIGAN .)	
<hr/>		

DISSENTING OPINION OF COMMISSIONER JOHN C. SHEA

(Submitted on November 26, 1996 concerning order issued on same date.)

I am not able to join in the approval of the accompanying order. As I have stated previously, see, November 1, 1996 Dissenting Opinion in Case No. U-11138, the means to reach the result embodied in the accompanying order cannot, as the majority states, arise under federal law. Rather, the Michigan Telecommunications Act, 1991 PA 179, as amended by 1995 PA 216, MCL 484.2101 et seq., MSA 22.1469(101) et seq., (the "MTA") is the only authority that should control this proceeding.

The MTA quite clearly spells out the necessary process for approving interconnection agreements. Under Section 303(2) of the MTA, the Commission has authority to approve interconnection arrangements between basic local exchange service providers. Indeed, Section 305(1)(b) forbids a basic local exchange service provider from refusing to interconnect. Section 352 sets forth the prices for interconnection. Section 203(1) of the MTA, invoked as the basis for the Commission's action in this proceeding, see, Order at 2, authorizes the Commission to issue orders only after a contested case held pursuant to the Michigan Administrative Procedures Act, MCL 24.201 et seq., MSA 3.560(101) et seq. No such contested case was convened in this

matter and there is no resulting record upon which the Commission can fashion an order. Instead, this matter has reached conclusion under a federal mandate that is at odds with the due process provisions of the Michigan Administrative Procedures Act.

Failure to observe these mandatory provisions of state law renders this proceeding -- and the interconnection agreement at issue -- fatally flawed. Thus, while settlements between adverse parties should be encouraged, and while the interconnection agreement, as the majority intends to approve it, appears to be in the public interest, I must reluctantly dissent.



John C. Shea, Commissioner